



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

March 3, 2016

[REDACTED]
District of Columbia Public Schools
[REDACTED]

RE: State Complaint No. 015-009

LETTER OF DECISION

PROCEDURAL BACKGROUND

On [REDACTED], the State Complaint Office of the Office of the State Superintendent of Education (OSSE), Division of Specialized Education received a State Complaint from [REDACTED] (complainant) against the District of Columbia Public Schools (DCPS) alleging violations in the special education program of [REDACTED] (Student ID # [REDACTED] hereinafter “student” or “child.”

The complainant alleged that DCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and regulations promulgated at 34 CFR Part 300, specifically, failure to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child for the purpose of determining if the child is a child with a disability, ensure the child is assessed in all areas related to the suspected disability, and draw upon information from a variety of sources for the purpose of determining if the child is a child with a disability.

The State Complaint Office (SCO) for OSSE has completed its investigation of the State Complaint. OSSE found that DCPS is in compliance with its obligations to use a variety of assessment tools and strategies for determining if the child is a child with a disability and ensure the child is assessed in all areas related to the suspect disability. DCPS is out of compliance with its obligation to draw upon information from a variety of sources in determining the child’s eligibility for special education and related services. This Letter of Decision (LOD) is the report of the final results of OSSE’s investigation.

COMPLAINT ISSUES

The allegations raised in the complaint, further clarified by a review of documents and interviews revealed in the course of the investigation, raised the following issues under the jurisdiction of the (SCO):

1. **Requirement to use a variety of assessment tools and strategies to gather relevant information for determining if the child is a child with a disability at 34 CFR §300.304(b)(1)(i), and the requirement to ensure the child is assessed in all areas related to the suspect disability at 34 CFR §300.304(c)(4)**
 - a. Failure to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child for the purpose of determining if the child is a child with a disability.
 - b. Failure to ensure the child is assessed in all areas related to the suspected disability.
2. **Requirement to draw upon information from a variety of sources for determining if the child is a child with a disability at 34 CFR §300.306(c)(1)(i)**
 - a. Failure to draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior, for the purpose of determining if the child is a child with a disability.

INVESTIGATIVE PROCEDURE

The investigation included interviews with the following individuals:

1. Complainant
2. Parent
3. DCPS [REDACTED]

The investigation also included review of the following documents which were either submitted by the complainant, submitted by DCPS, or accessible via the Special Education Data System (SEDS):

[REDACTED]

GENERAL FINDINGS OF FACT

1. The student was determined ineligible for special education services on [REDACTED].
2. The student's local educational agency (LEA) is DCPS.

ISSUE ONE: EVALUATION PROCEDURES

Findings of Fact

1. On [REDACTED], the parent referred the student for a special education evaluation out of concerns related to [REDACTED] diagnosis as a child with [REDACTED].
2. DCPS administered the [REDACTED] Ages and Stages Questionnaire, 3rd Edition (ASQ-3) to identify the student's areas of concern, including speech, physical therapy, and occupational therapy.
3. The [REDACTED] SEDS Communication Log notes that the parent had concerns with the student's fine motor skills, expressive and receptive language, and the student walking on [REDACTED] toes.
4. DCPS completed a review of the student's independent physical therapy evaluation on [REDACTED], to address concerns about the manner in which the student was walking.
5. DCPS completed a speech and language evaluation report on [REDACTED], to address concerns with expressive and receptive language, and stuttering.
6. DCPS completed an occupational therapy evaluation report including review of the student's independent occupational therapy evaluation on [REDACTED], to address concerns with fine motor skills.
7. DCPS completed an educational assessment report on [REDACTED], to test the student's current academic achievement level.

Discussion/Conclusion

Based on the analysis below, DCPS is in compliance with 34 CFR §300.304(b)(1)(i), due to conducting evaluations that included information from a variety of assessment tools and strategies. DCPS is also in compliance with 34 CFR §300.304(c)(4) due to assessing the student in all areas related to the suspected disability.

Pursuant to 34 CFR §300.304(b)(1)(i), public agencies must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child for the purpose of determining if the child is a child with a disability. Additionally, public agencies must ensure the child is assessed in all areas related to the suspected disability. (34 CFR §300.304(c)(4)) The complainant alleges that DCPS conducted evaluations that lacked formal assessment data, did not evaluate the child in all areas of concern, and did not complete the evaluations requested by the parent.

The parent referred the student for a special education evaluation due to concerns related to [REDACTED] medical diagnosis as a child with [REDACTED]. After receiving the special education referral, DCPS administered the ASQ-3 screener to identify areas of concern and to determine specific evaluations necessary to gather additional student data. The areas of

concern identified by the [REDACTED] ASQ-3 and reported by the parent in the [REDACTED] phone call with the Early Stages Family Care Coordinator (FCC) included fine motor skills, expressive and receptive language, and walking on toes.

DCPS conducted a speech and language evaluation that addressed concerns with expressive and receptive language, and stuttering. The occupational therapy evaluation conducted by DCPS, and the review of the student's independent evaluation, addressed concerns with fine motor skills. The independent physical therapy evaluation, reviewed by DCPS, addressed concerns about the manner in which the student walks and classroom mobility skills. Although there were no specific academic concerns raised by the parent or identified by the ASQ-3, DCPS also conducted an educational assessment to test the student's aptitude and current academic achievement levels.

OSSE draws a distinction between formal and informal assessments, clarifying that formal assessments are standardized tests that measure overall student achievement which are administered to a representative sample, while informal assessments are what teachers, related service providers, or other educators use to determine how well a child is progressing in core academic, behavioral, and functional areas.¹ The evaluations conducted or reviewed by DCPS included both formal and informal assessment tools and strategies, including diagnostic testing of student abilities, parent input, and student observation. OSSE's review of the resulting evaluation reports revealed that DCPS gathered this formal and informal student data prior to determining if the child is a child with a disability. Specifically, the student's speech and language evaluation encompassed both informal and formal assessments including screeners, observations, parent interviews, and detecting blockage in the outer ear canal. The student's physical therapy evaluation was comprised of informal assessments including a family interview and observations, as well as a formal physical therapy evaluation that was conducted by the [REDACTED]. The occupational therapy evaluation consisted of both informal and formal assessments including a parent interview, observations, and a review of the formal occupational therapy evaluation conducted by the [REDACTED]. The educational assessment consisted of both informal and formal assessments including a behavioral observation, parent interview, and the Woodcock Johnson IV Achievement Test.

The complaint states that upon request, DCPS refused to assess the student's aptitude, physical functioning, and social functioning. The IDEA does not give the parent the right to determine what assessments should be conducted. Rather, the selection of particular testing or evaluation instruments is left to the discretion of State and local education authorities.² However, OSSE's review of the record reflects that DCPS assessed the student's academic aptitude in the educational assessment and reviewed the student's physical functioning by reviewing and reporting on the independent physical therapy evaluation. DCPS additionally reviewed the student's ability to interact socially with peers and teachers in its speech and language evaluation. Although DCPS may not have

¹ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 2 (March 22, 2010), available at <http://osse.dc.gov/publication/part-b-initial-evaluation-and-reevaluation-policy-final-march-22-2010>.

² OSEP Letter to Anonymous, September 17, 1993 (20 IDELR 542).

conducted a specific assessment requested or otherwise anticipated by the parent, it was under no obligation to do so where all identified areas of concern were evaluated.

OSSE finds that the evaluations conducted by DCPS used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information for the purpose of determining if the student is a student with a disability, and ensured that the student was assessed in all areas related to the suspected disability.

Therefore DCPS is in compliance with 34 CFR §300.304(b)(1)(i) and 34 CFR §300.304(c)(4).

ISSUE TWO: ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES

Findings of Fact

1. The complainant submitted a written request for evaluation to DCPS on [REDACTED].
2. The [REDACTED] physical therapy evaluation report stated that the student's current gross motor abilities are sufficient for [REDACTED] to function adequately in [REDACTED] current educational setting, but that [REDACTED] needs to be monitored for [REDACTED] gross motor weaknesses.
3. The [REDACTED] speech-language evaluation report stated that it does not appear that the student meets the criteria for eligibility as a student with a Speech-Language Impairment under the DCPS Eligibility Guidelines and is able to interact with [REDACTED] peers.
4. The [REDACTED] occupational therapy evaluation report states that the student's areas of concern may impact [REDACTED] ability to participate in an academic curriculum.
5. The [REDACTED] educational assessment report concluded that the student is able to retain the appropriate educational information needed to make and maintain adequate progress in the classroom in the cognitive areas.
6. The student's [REDACTED] physical therapy report, [REDACTED] speech and language report, [REDACTED] occupational therapy report, and [REDACTED] educational assessment report incorporated information from formal assessments, diagnostic screenings, behavioral and clinical observations, record reviews, and interviews with the parent.
7. The [REDACTED] multi-disciplinary team (MDT) meeting participants reviewed and discussed existing student data from the evaluation summary reports of each area of concern.
8. The [REDACTED] Disability Worksheet states that the student does not meet the criteria for Developmental Delay.
9. The [REDACTED] MDT meeting participants discussed whether the student could qualify for special education services under the disability category of Other Health Impairment (OHI), but concluded that [REDACTED] did not.
10. The [REDACTED] MDT meeting participants discussed that the student could benefit from having a 504 plan implemented in the school setting.
11. The [REDACTED] MDT meeting participants determined that the student was ineligible for special education and related services.

12. The eligibility determination report was issued on [REDACTED].
13. The PWN of special education non-eligibility was on issued [REDACTED].

Discussion/Conclusion

Based on the analysis below, DCPS is not in compliance with 34 CFR §300.306(c)(1)(i), due to its failure to draw upon information from a variety of sources for the purpose of determining if the child is a child with a disability.

Eligibility Determination

Pursuant to 34 CFR §300.306(c)(1)(i), in interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The complainant alleges that DCPS did not base the student's eligibility determination on relevant student data.

At the [REDACTED] meeting to determine the student's eligibility for special education, the MDT reviewed reports from a physical therapy evaluation, speech-language evaluation, occupational therapy evaluation, and educational assessment. These evaluation reports incorporated diagnostic screenings, behavioral and clinical observations, record reviews, and interviews with the parent. After reviewing the assessment reports, the MDT completed the disability worksheet for Developmental Delay, determined that the student did not meet the disability classification criteria, and determined that the student was not eligible for special education. The MDT also discussed whether the student would qualify for IDEA services under the disability category of OHI, but concluded that [REDACTED] did not qualify. The team reasoned that the student did not qualify under this category because [REDACTED] medical diagnosis of [REDACTED] was not affecting [REDACTED] ability to make or maintain progress within the general education classroom. There is no evidence that the [REDACTED] MDT completed the disability worksheet or reviewed the student's data to determine if [REDACTED] meets the criteria for classification under the OHI eligibility category.

OSSE reviewed the explanation provided by DCPS in the [REDACTED] prior written notice (PWN) to the parents, explaining why the non-eligibility determination was made.³ The PWN states that the MDT found the student ineligible for special education services as a student with a Developmental Delay, after a review of relevant data and notes. The MDT's conclusion is inconsistent with the occupational and physical therapy evaluations that were the only sources of data under consideration. Although MDTs may review and reject conclusions in student assessments, there is no evidence that this MDT did so when determining the student ineligible for special education services.

OSSE finds that there is no evidence to show that DCPS considered the evaluation findings when determining whether or not the student would be eligible for special education services. The student's occupational therapy report states that the student's areas of

³ Questions and Answers on IDEA Part B Dispute Resolution Procedures, p. 18 (July 23, 2013).

concern may impact [REDACTED] ability to participate in the academic curriculum, and that [REDACTED] gross motor skills require additional monitoring and continued service. However, meeting notes indicate that the MDT did not consider this information during the [REDACTED] eligibility discussion and determined the student ineligible for special education services without addressing the contradictory student data. OSSE finds that without documentation of consideration of these evaluation results, there is no evidence that the student's eligibility determination is supported by the evaluation and other data included in the student's record.⁴

The [REDACTED] PWN indicates that no additional options were considered after finding the student ineligible under Developmental Delay. The MDT meeting notes reflect that after OHI was identified by the parent as an option, the MDT ruled this classification out after only a cursory discussion, failing to review the OHI eligibility criteria as required by State policy.⁵ According to the meeting notes, the MDT did not consider whether the student's specific chronic or acute health conditions limit strength, vitality, or alertness and did not consider whether that had an adverse effect on educational performance.⁶ As the PWN issued by DCPS after the MDT meeting did not include any mention of the MDT considering any options beyond a Developmental Delay classification, DCPS did not appropriately address the parent's proposal to consider an OHI disability classification. Moreover, there is no evidence that DCPS identified the reasons for rejecting this classification as a basis for the student's eligibility for services. OSSE additionally finds that DCPS failed to determine ineligibility under this classification consistent with standards established by OSSE policy.⁷

OSSE has the obligation to determine not only whether the public agency has followed the required Part B procedures to reach its determination, but also whether the public agency has reached a determination consistent with Part B requirements governing the evaluation and eligibility determination.⁸ In this instance, the process employed by DCPS in determining that the student was ineligible for special education is inconsistent with OSSE and IDEA established standards. Therefore, DCPS is not in compliance with 34 CFR §300.306(c)(1)(i).

Referral for Section 504 Services

OSSE's review of the record identified that upon finding the student ineligible for services under the IDEA, the [REDACTED] MDT recommended the development of a 504 plan. Eligibility meeting notes state that this plan would be implemented in the school setting to accommodate the student's identified physical therapy needs. The MDT provided information to the parent on how that process could be initiated at the start of the new school year. OSSE reminds DCPS of its obligation under Section 504 of the Rehabilitation Act of 1973, to provide reasonable accommodations or services to students who qualify for

⁴ *Id.*

⁵ See OSSE Part B Initial Evaluation/Reevaluation Policy, p. 27 (March 22, 2010).

⁶ *Id.* at p. 22 (March 22, 2010) and 34 CFR §300.8(C)(9).

⁷ Questions and Answers on IDEA Part B Dispute Resolution Procedures, p. 18 (July 23, 2013), OSSE Part B Initial Evaluation/Reevaluation Policy, p. 27 (March 22, 2010).

⁸ Questions and Answers on IDEA Part B Dispute Resolution Procedures, p. 18 (July 23, 2013).

these services and that it is not the responsibility of the parent to initiate this process for evaluation when the LEA suspects that the student may require these services.

Timely Evaluation

Pursuant to 34 CFR §300.301(c), initial special education evaluations must be conducted within 60 days of receiving parental consent for the evaluation or within the timeframe established by the state. The District of Columbia has established a 120-day timeline from the date of referral for completing assessments or evaluations of students. (D.C. Official Code §38-2561.02(a)) OSSE has clarified that the 120-day timeline applies to the initial evaluation of all students with disabilities by LEAs in the District of Columbia and that initial evaluation includes the determination of eligibility.⁹

In the complaint initiation letter sent [REDACTED], OSSE notified the parties that it would not be investigating this allegation as the complainant had failed to include any facts in the original complaint on which the allegation was based. Upon receiving documentation of the parent's request for evaluation from the complainant, OSSE reviewed the evaluation timeline and found that the parent submitted a written request to evaluate the student to DCPS via e-mail on [REDACTED].

A meeting to determine the eligibility of the student was held on [REDACTED], where the student was found ineligible for special education services. The student's eligibility determination report reflecting the MDT's decision was issued that same day. OSSE finds that the final eligibility determination was issued on the date ending the 120-day timeline from the [REDACTED] date of referral, constituting a timely evaluation of the student.

CONCLUSIONS

1. DCPS is in compliance with 34 CFR §300.304(b)(1)(i), due to conducting evaluations which included information from a variety of assessment tools and strategies.
2. DCPS is in compliance with 34 CFR §300.304(c)(4), due to assessing the student in all areas related to the suspected disability.
3. DCPS is not in compliance with 34 CFR §300.306(c)(1)(i), due to its failure to draw upon information from a variety of sources for the purpose of determining if the child is a child with a disability.

CORRECTIVE ACTION

1. In order to correct the noncompliance with 34 CFR §300.306(c)(1)(i), DCPS must:
 - a. Convene an MDT meeting, at a time and place determined in consultation with the parent, to determine the student's eligibility for special education and related services under the IDEA. The MDT team must review and discuss all existing evaluation and assessment data, including independent evaluation data collected by the parent since the [REDACTED] MDT meeting, and determine eligibility and the need for services. Documentation of completion of this requirement is due to OSSE within 30 days of the date of this decision.

⁹ OSSE Part B Initial Evaluation/Reevaluation Policy, p. 14 (March 22, 2010).

- b. If the student is found eligible for services under the IDEA, develop an IEP within 30 days of the eligibility determination. Documentation demonstrating completion of this requirement is due to OSSE within 60 days of the date of this decision.

All corrective actions must be completed by the date specified above, but in no case later than one year from the date of this letter. If you have any questions regarding this decision, please contact Victoria Glick, Manager, State Complaints, at Victoria.Glick@dc.gov or 202-724-7860.

Sincerely,

Amy Maisterra, Ed.D., MSW
Assistant Superintendent for Elementary, Secondary, and Specialized Education

cc: [REDACTED], Complainant
[REDACTED], Parent